

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**JEFFERY CHARLES ELMORE
ADC # 091418**

PLAINTIFF

v.

No. 5:12-cv-325-DPM-BD

**WENDY KELLY, Deputy Director, ADC;
JENNIFER McBRIDE, Infirmary Administrator,
Varner Unit, ADC; AMANDA McLEAN, Director
of Nursing, Varner Unit, ADC; CONNIE HUBBARD,
Nurse Practitioner, Varner Unit, ADC; JACQUELINE
CARSWELL, Nurse Practitioner, Varner Unit, ADC;
OJIUGO IKO, Dr., Varner Unit, ADC; and ANDRIA
CANTRELL, Nurse, Varner Unit, ADC**

DEFENDANTS

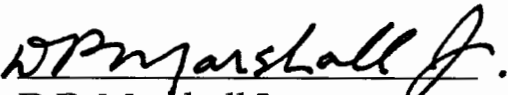
ORDER

1. On *de novo* review, the Court overrules Elmore's objections, *No. 114*, and adopts Magistrate Judge Deere's recommendation, *No. 113*, as modified. The Court must, and does, take the summary-judgment record in the light most favorable to Elmore. It took six months, and fifteen visits, for the health-care professionals to diagnose Elmore's scabies correctly and treat the exposure properly. In the interim, Elmore was cared for and treated: he received lotions, shots, a prescription for hot baths, and other remedies. But these treatments did not work because of the missed diagnosis. He makes a strong case that this course was almost certainly negligent, rather than

adequate. But he has not made a submissible case of deliberate indifference—the health-care professionals simply misdiagnosed him. Notwithstanding Elmore’s speculations, no sufficient record evidence exists of the health-care professionals being wilfully ignorant of what Elmore says was a scabies problem at the prison. Because no reasonable fact-finder could say on this record that the health-care professionals had a state of mind equivalent to criminal recklessness, Elmore’s deliberate-indifference claims against McBride, McLean, Hubbard, Carswell, Dr. Iko, and Cantrell fail as a matter of law. Their motion for summary judgment, *No 97*, is granted.

2. Elmore didn’t object to Judge Deere’s later proposal recommending the dismissal of Wendy Kelley, *No 119*. The Court sees no clear error of fact or legal error on the face of the record. FED. R. CIV. P. 72(b). The recommendation is adopted. Kelley’s motion for summary judgment, *No 115*, is granted.

So Ordered.


D.P. Marshall Jr.
United States District Judge

14 January 2014